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HUMAN RIGHTS AND ASIA*

**The Honorable
Mirza Hameedullah Beg****

PROCESS NOT MECHANICAL

Mr. Brzezinski recently described the human rights' movement of today as an "historical inevitability." He also said that it represented a "turning point" in human history. Whether the present stage in its troubled history proves to be a "turning point" or not will be really for future historians to determine. But, what is undeniable is that the history of human civilization itself largely revolves round the efforts of the enlightened and well-intentioned in every age to advance the frontiers of freedom so as to secure the realization of human rights by as large a number of human beings as possible.

With every technological revolution, with increasingly greater success of the human species in harnessing the powers of nature to serve its designs and purposes, the prospects of a new golden age of material prosperity and contentment repeatedly open up before it only to be marred by some new catastrophes and dangers disclosed by its inability to control those who rule and determine the course of history. Racial, religious, national prides, greed, unwholesome fears and suspicions, lust of individuals for power and the desire of man to exploit man to serve short-sighted selfish ends, instead of using newly acquired means and powers for achieving the general good or welfare of all, have dashed our repeatedly raised hopes to the ground, and, ultimately, brought down and damaged not only those few and powerful who have misused their powers but also the many who are innocent and helpless.

We no longer, or, at least, should no longer hug the delusion that freedom, peace, prosperity, and progress will automatically spread and confer the benefits of modern science on all mechanically, as it was once believed. These require unremitting efforts of honest, competent, and incorruptible governments wedded to policies beneficial to the whole of human-

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* Remarks by Justice Beg, delivered at Santa Clara, California, March 29, 1979.

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ity and not to those aimed at promoting the interests of sections of it only. It also needs the eternal vigilance of watchful citizens to achieve well-formulated ends by correct means that do not, by attempting to reach desired goals by taking attractive but questionable short cuts, twist and defeat the ends themselves.

THE TWO BASES OF HUMAN RIGHTS

I believe in the essential goodness of human nature. I think that the overwhelming mass of people throughout the world like to see not only themselves but also others happy and prosperous. One does not deserve the high status of a human being unless one has got the urge deep down within one to say to every other human being on earth: "I cannot be happy unless I see you happy too! My well-being and prosperity are galling to me if I cannot see even your bare needs satisfied!" That, I believe, is what is meant by human "fraternity." It is the recognition of one's own self in others. And, this is perhaps the best part of one's true self. It is the core of the "Real Will" of the Idealist political philosophy. The religious may call it the "Divinity within us." T. H. Green pointed out, in his lectures on "Principles of Political Obligation," that Rousseau's theory of a popular sovereignty rested on the recognition that

there's on earth a yet auguster thing,
Veiled though it be, than Parliament and King!

That "auguster thing" resides, I believe, in the human spirit or soul (if you like to call it that). If one has faith in it and its ultimate triumph, one can share not only the belief of Mr. Brzezinski that the human rights' movement represents what is historically inevitable in our world, but that, despite the setbacks or defeats it may suffer temporarily in various parts of the world, it will eventually establish the just and free worlds we long for not only in certain fortunate parts of it but throughout it wherever the human race is found.

However, it is not merely on the ethics of a Law of Nature or on what one conceives of as the real nature of Man which does not find fulfillment if any part of the human race suffers due to the injustice of man to man, but on the elementary needs of the very survival of the human race, in the economically, socially, politically, and ideologically interlinked world of modern science and technology (dislocations caused by economic, social, and political suffering and strife leap across national frontiers), that a sound structure of human rights, pro-

tected by law and supported by an effective system of public education, spread all round the globe, must rest. The need for such a legal-cum-moral structure with institutional instruments for sound formulations and effective enforcement and realization was literally burnt into our souls and imprinted upon our minds due to the grossly inhuman abuse of modern science and technology by Nazi Germany and Fascist Italy in attempts to subjugate the rest of the world to satisfy perverted desires. Hence, human rights, hitherto protected by constitutions of national states only, were made the pivot of the system of international peace, security, and cooperation embodied in the United Nations' Charter.

THE UNIVERSAL DECLARATION

The declared international purposes and their implied followup actions were elaborated in the Universal Declaration of Human Rights, of 1948, the two International Covenants of Economic, Social and Cultural Rights, and Civil and Political Rights, and in a host of Conventions on special topics, such as Prevention and Punishment of Genocide, Elimination of All Forms of Racial Discrimination, and Political Rights of Women. The European and American Conventions set up regional machinery of what are notable attempts at international prevention of discrimination and other violations of human rights. This machinery affords some redress to the injured, on an international level, for infringements of human rights even by states of which they are subjects. Recognition of the status of individuals and groups in international law, so as to enable them to invoke a "law" relating to human rights against offending states, marks a shift in the very basis of international law. It is now not only a law recognized by nation states for the purpose of regulating their own relations, but also one for protecting individuals against maltreatment and injustice by governments of their own countries. It is on its way to becoming part of the universally recognized law of whole mankind. Despite shortcomings and failures of this "law" in the field of enforcement, I agree with Professor Louis B. Sohn's broadly stated assessment, reached after a survey of international instruments and practices: "[T]he Universal Declaration of Human Rights has thus become a part of the constitutional law of the world community; and, together with the Charter of the United Nations, it has achieved the character of a world law

superior to all other international instruments and to domestic laws."¹

The Universal Declaration of Human Rights, adopted, without a dissent (although some countries abstained from voting), as long ago as 1948, by all the countries represented in the United Nations organization, was meant to provide "a common standard of achievement for all peoples and all nations," so that "every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance." Nevertheless, the divergent expositions of its meaning and significance by jurists and the varying attitudes of both governments and peoples of different countries around the world on human rights issues remind one of an amusing story of how writers of different nationalities, each setting out to write a book on "The Elephant," revealed their particular approaches to the same subject.

THE STATE: A MAD ELEPHANT?

The story runs: The Frenchman paid a few casual visits to the zoo, and, in a fortnight, produced a booklet, in yellow and blue colors on "Les amours des elephantes!" The Englishman marched off to Africa, and, in three months, wrote a book on "How I captured my first elephant!" The American started collecting statistics on elephants, and, after he had collected enough, published a guidebook on "Bigger and Better Elephants!" The German explored every conceivable source of information on elephants, and, after three years, brought out three volumes, each running into a thousand pages, and called his work: "An Introduction to the Study of the Elephant!" The Russian, it is said, wrote a much less comprehensive thesis, in less time, about the "Beneficial effects of Communism on Elephants!" The Irishman, however, promptly issued, within a few days, a virulent political pamphlet entitled: "The Elephant and the Irish Question!"

If I were asked to write about the Elephant, in my present state of mind, I would follow the Irishman and write quite a lot about "The Elephant and Human Rights." And, I would iden-

1. L. Sohn, *The Universal Declaration of Human Rights*, in *HORIZONS OF FREEDOM* 11-12 (1969).

tify that elephant as "the State," whose duty it is to protect, promote, and enforce human rights, but which, very paradoxically and tragically, is often seen acting like an elephant gone mad, particularly in Asia and Africa now. My observations here will be directed mainly towards considering conditions needed for taming that elephant. In some countries, such as India, the primary human rights problems are those involved in providing food to the starving, shelter to the homeless, clothing to the naked, health to the deceased, jobs to the unemployed, widespread vocational education as means of making a respectable living, and scientific knowledge and education to remove superstitions and prejudices which prevent the growth and expansion of human minds and spirits. It is only after these elementary needs of our masses are adequately met that they could conceive of those "bigger and better" sophisticated and refined human rights about which so many people in the West feel so concerned. I may be forgiven for observing that the manner in which human rights problems tend to be discussed in Western countries not infrequently gives the impression that human rights could be some pain relieving pills or some attractive goods manufactured in the West which could be exported and profitably sold to Asiatics and Africans. To us, they are matters of utmost urgency, raising questions of life and death, involving fates of millions. Inability to cope with these questions is toppling governments, causing social, economic, and political upheavals throughout Asia.

It should be evident to everyone who looks at the rapidly changing economic, social, and political scenes in Asia that, unlike the relative stability of the West in these respects, perhaps the greatest danger spots for world peace and security lie in Asia. If we are really concerned about human rights, with which world peace and security are inseparably bound up, our greatest efforts would be directed towards providing them in regions where they are most ruthlessly and systematically trampled upon and, therefore, most required. They cannot, as I have already said, be just manufactured in the West and offered for sale to Asiatics and Africans. They have to be not only fought for and won, but also constantly cherished, nursed, and guarded by those who need them. Effective means for obtaining them and suitable machinery for adequately protecting them even against infringements of these rights by their own States and governments, and for promoting their increasing realization and expansion, to have real value and the required

strength and stability, have to be devised indigenously by those who live in territories subject to these States. All that others can do is to help, where possible, to create conditions which may enable those who must help themselves to do so.

SELF-DETERMINATION

The indestructible faith of the American people in human rights was proclaimed nowhere more pithily, more powerfully, or more nobly than in the Preamble to their Declaration of Independence of July 4, 1776, which, as we all know, described as self-evident truths: "that all men [which, correctly interpreted, includes all women too] are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and pursuit of happiness." What is less well remembered is that here we also find the right of individuals to change or overthrow governments which fail to satisfy their true purposes. It went on to say that "to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends it is the right of the people to alter or abolish it and to institute a new government, laying its foundations on such principles and organizing its powers in such form as to them shall most likely effect their safety and happiness."

When this principle of self-determination was thus enunciated in the preamble to the American declaration, democracy appeared to many people as a panacea for all the ills of government and a sufficient safeguard against misuses of power by governments. The twentieth century world, however, has experienced not only vast technological revolutions but exposed the grave dangers of misuses of science by exploitative interests and groups and governments. We saw the ease with which even a people so cultured and gifted as the German nation could be reduced to a state of frenzy and become the prisoner of a system built up by paranoids, bent on slaughter and destruction, using scientific techniques based on the theories of Professor Pavlov in a way which was depicted graphically in Serge Chakhotin's book on "The Rape of the Masses."²

2. S. CHAKHOTIN, *THE RAPE OF THE MASSES* 11-41 (1940).

COMPLEXITIES AND DANGERS

The problems of our world of modern science and economic and political independence of all its parts have become so bafflingly complex that even highly educated individuals of advanced nations tend to be attracted by simplifying analyses, which are rarely wholly correct, and, consequently, also by equally simple suggested solutions which could, if accepted, raise more problems than solve them. When, added to this increased complexity of our world, there is economic suffering and insecurity, it is not surprising that the common man generally prefers what appears to him to offer an escape from economic uncertainty and distress even if it involves loss of political freedom or of right of free expression and criticism. And, when one thinks of the poverty-stricken mentally and spiritually inhibited average or common man in a country like India, one wonders how he could be expected to use his political freedom at all well before he attains a sufficient measure of economic, social, and intellectual freedom and independence.

The situation depicted above is full of grave dangers. It enables greedy, dishonest, power-seeking, corrupt individuals and groups, whether they be in politics, government, business, industry, or the professions, to exploit masses of easily misled people. In Western countries, such as Britain and the U.S.A., there is a sufficiently affluent, enlightened, critical, vigilant middle class of persons who lead and form public opinion. Although this opinion is not infallible, yet, its pressure prevents democratic systems of government, built on the secure foundations of healthy traditions of respect for elementary human rights, from failing or meeting any major disaster. In India too, an educated middle class, in which the late Pandit Jawaharlal Nehru had great faith, has provided such stability and strength to democratic forces and system of government as to keep it functioning despite an emergency during which enforcement of a number of basic rights was temporarily suspended for questionable reasons. This class is drawn from urban—commercial and rural—landowning circles, the not uninfluential liberal professions, and salaried persons with comparatively fixed incomes. It is a class which perhaps suffers most, at least that part of it which depends on fixed incomes, under the impact of world-wide inflation, rise in prices, and economic depression. It tends to be squeezed out by economic distress and to provide converts to disturbing revolutionary movements which some-

times adopt even terroristic methods to express their sense of frustration.

AN ANTHROPOLOGIST SPEAKS

A distinguished American anthropologist, Professor Berreman, who seemed to have been principally thinking of India, which country he mentioned repeatedly in the course of a recent address advocating a marriage between science and ethics (although his assessment could be meant to apply to other Asian countries too such as Pakistan, Thailand, Indonesia, and the Phillipines), opines: "Technological progress has contributed largely to impairment of human rights in the world today by providing the wherewithal for dramatically increased disparities among and within nations in the distribution of food, health, housing, employment, income, wealth, justice, security, self-determination, recreation and life expectancy. With the end of colonialism, the spread of man's communications and the dissemination of fateful technological capabilities, the means to express resentment and to obtain redress are becoming irresistible even as efforts to hoard privilege, resources, and power become more determined. As a result the world is one of diminishing personal safety, individual satisfaction, social stability and collective security. To continue to ignore or slight human rights in pursuit of technological efficiency in order to maximize returns on investments is to increasingly jeopardize individuals, institutions, and humankind. Social justice and survival have finally met on common ground." In other words, without social justice, not only human rights in Asia and Africa but also world peace and security will be jeopardized.

IRAN

Perhaps Professor Berreman's analysis applies most aptly to Iran, where popular revolt against the frying pan of a dictatorial oppression, denial of human rights, and the draining of the country's wealth by the Shah and a corrupt bureaucracy has thrown that unfortunate country into the fire of an anarchy in which religious bigotry and theocratic rule, if not lawlessness, disorder, and lynch law, spell the doom of human rights for the present. And, the overthrow of a regime which, though it perhaps promoted a superficial progress towards some secularism, had concentrated primarily on making maximum

profits, has caused an energy crisis throughout the world threatening to upset world economy and to impede progress towards greater prosperity, bigger and better human rights, and more social justice in all parts of the world.

The solution, which may seem sensible to the absolutely rational, particularly in view of unjustifiable rises in the price of essential commodities like oil to make more and more profits, is that the whole of earth's natural resources be treated as the common heritage of all mankind and their outcome distributed equitably between whole mankind in accordance with needs and contributions to production under a justly framed world plan. But, such drastic solutions are hardly practicable. They must perhaps await acceptance until mankind has more than half destroyed itself by another world holocaust far more destructive than the last one or until the human rights movement becomes strong enough to persuade peoples throughout the world to accept voluntarily some kind of a world superstate or confederal authority based on mutual trust, understanding, and cooperation, which could protect the common interests of all as against sectional interests of some only out of deep concern for our common humanity and a common need and desire for survival. Some historians, such as the American Professor Thompson, seem to think that it is not only more likely but almost certain that the former and not the latter event will happen before the end of the twentieth century. I prefer not to be so pessimistic.

U.S.S.R.

I cannot omit from this bird's-eye view of protection of human rights in Asia, the position in the U.S.S.R.—the major part of which is Asian—as I saw it in the course of a short visit as a member of an official delegation to that country. In their system, our doctrines of Separation of Powers and of Judicial Review of Administrative and Legislative action have no place. But, we were informed that the Procurator-General, with Procurators working under his supervision and guidance in all the Republics of the U.S.S.R. as guardians of the "Principle of Legality," looks after allegations of wrongs done or breaches of duty by officials as well as by citizens in a manner which, because it is not surrounded with technicalities, provides speedier and more effective relief than the citizen could get under our system with its dilatory and ruinously expensive litigation in courts. Indeed, the proved effectiveness of this

mode of providing much needed speedy relief to aggrieved citizens, instead of compelling them to litigate, underlies suggestions for adopting the institution of the Ombudsman, or a Public Grievances' Commissioner, which is said to have worked very well in Scandinavian countries and in New Zealand. The idea is attractive in these days of increased legal delays and complexities and expensiveness of litigation in courts of the type we are accustomed.

The Russian system of holding periodic conferences of Chief Justices of all Republics, who are ex-officio members of the Supreme Court, and judges of the Supreme Court of the U.S.S.R., and the Procurator-General, and the Minister for Law and Justice of the U.S.S.R., to lay down principles of policy to be followed in the decision of cases before courts was, I confess, very difficult for me to understand at all well. If the object was, as it appeared to be, that courts should have a part to play, through their decisions, in carrying out some periodically reviewed and discussed Socialistic policies, such a principle would certainly appear to one brought up on a very different constitutional philosophy to strike at the root of judicial independence as we conceive of it. We are told that courts in the U.S.S.R. have an important "educational role" to play in sustaining socialistic social structure, ideology, and outlook. This feature, combined with the constitutional provision vesting the power of interpreting the Constitution authoritatively in the Supreme Soviet, which is also the supreme administrative and executive authority, makes it clear that the judicial role in the U.S.S.R. is, apparently, to cooperate with and not to control the executive or legislative organs or to protect the individual against any possible encroachment by them on his or her human rights. If there had been a Supreme Court in the U.S.S.R. invested with the power to correct the aberrations of the Executive in dealing with human rights or to lecture to the Russian Government in the way in which the Supreme Court of India frequently lectures to the Government of India, it could have told the Russian Government that, although the State had abolished private property in means of production and nationalized these, it was going too far in asserting a new species of the State's proprietary rights unjustifiably over wives of foreign diplomats simply because they happened to have Russian nationality before they were married, and that it was, thereby, denying elementary human rights.

THE MIDDLE EAST

This reminds me of the grossly twisted view of human rights of women revealed by the shooting down, presumably on official orders, of an unhappily married woman of the Saudi Arabian royal family seen in the company of a man other than her husband. The man, who was not killed, was reported to have explained that he was only trying to help her obtain some legal aid against her husband's alleged cruelty. The official explanation showed that, without considering any trial of any disputed facts to be necessary, the woman was assumed to have been guilty of infidelity to her husband for which death by shooting, without any trial, was considered to be suitable punishment! In the Arab kingdoms and sheikdoms there are no constitutional provisions, so far as I know, for enforcing any basic human rights against the government. "Islamic brotherhood" does not seem to be enough to prevent barbaric disregard of human dignity and rights.

Before leaving the Near East, which is often spoken of as the "Middle East" here, I may observe that the real problem between the Israelis and Arabs seems to me to lie in the religious-cum-cultural exclusiveness or intolerance of each towards the other which not only prevents them from integrating as members of a single society but also makes them disinclined to accept even coexistence as equals living side by side although both are Semetics. If each community could, in future, be somehow persuaded to accept members of the other community as citizens of equal worth with equal legal rights, knit together in a single secular federal or confederal democratic polity, just as we in India, with even greater divergencies in culture and religion, have managed to build our peculiar quasi-federal system, there will be hope for peace between them. President Carter deserves to be congratulated for achieving what seemed to be practically impossible at one time. The Peace Treaty between Egypt and Israel appears to be a beginning of a new understanding and at least a recognition of the need for equality and coexistence between the Jew and the Arab without which further progress in the direction of peace between them was not possible.

BASIC TENET: EQUALITY

The basic tenet of the human rights movement is the equality of all mankind in the eye of law. Human rights, to lawyers, are not just moral or natural rights. They are those

rights without which the individual who is denied these rights could not be considered to be human in the eye of law. And, rights to be real and not illusory have to be, as we lawyers know so well, both legally recognized and enforceable against the State itself which represents the society on whose behalf it functions. Although, the duty to recognize them and respect them and promote their observance, as declared in the International Universal Declaration, is cast upon individuals, groups, societies, as well as upon the States and Governments they set up, the test of the place on the scale of "political civilisation," as Henry Sidgwick puts it, of a State is the degree to which the individual can get justice or enforcement of his rights against the State and its organs and officials, if need be, in the Courts of the State itself.

SOME INDIAN CASES

Judged by the standard indicated above, judgments of the Supreme Court of India show that the Indian Republic is among those at the very apex of Sidgwick's scale.

The Preamble to the Indian Constitution states the following objectives of what is described as our "Sovereign Socialist Secular Democratic Republic": "Justice, social economic and political; Liberty of thought, expression, belief, faith, and worship; Equality of status and opportunity; Fraternity assuring the dignity of the individual and the unity and integrity of the Nation."

Soon after the promulgation of our Constitution in 1950, questions arose out of the case of preventive detention of Gopalan,³ a well known Communist leader, about the meaning of the constitutional guarantee, given by Article 21 to all persons—not merely to Indian citizens—against deprivation of life or liberty by the State by any means not in "accordance with procedure established by law." In view of other constitutional guarantees, such as that of equal protection of laws and also of equality before the law—again given to *all* persons—and certain additional guarantees of freedom of expression, of movement, and of engaging in any business or profession, given only to Indian citizens, the Supreme Court was asked to rule whether the validity and reasonableness of the procedure laid down by statutory law for preventive detention could be challenged.

3. A. K. Gopalan v. State of Madras, [1950] 1 S.C.R. 88, 124.

Now, the phrase "procedure established by law" was deliberately adopted by our Constitution makers in preference to "due process of law" after considerable discussion and consideration of the provisions of other constitutions, such as the Japanese Constitution, and advice of constitutional experts including Justice Frankfurter of the United States Supreme Court. Furthermore, Article 22 of our Constitution itself laid down, quite elaborately, the requirements of a reasonable or due procedure to be satisfied by all laws relating to preventive detention. Hence, the Court held that further or other tests of reasonableness or of due process of law could not arise in such cases. While doing so, some judges expressed the opinion, which was not absolutely necessary for deciding the case, that no questions of impact of other guarantees on a law regulating deprivation of personal liberty could arise. In subsequent cases, the Supreme Court explained that the rationale of the decision in *Gopalan's* case was confined to challenges to the validity of laws of preventive detention for which specific tests or requirements were very elaborately furnished by Article 22 of our Constitution. It held that this did not stand in the way of expanding the penumbras or the peripheries of personal liberty to include, for instance, claims for passports, which could be governed by more than one constitutional guarantee. This wider view of personal liberty was taken, for instance, in *Mrs. Maneka Gandhi's* case,⁴ recently, where judgments of the United States Supreme Court and also of the King's courts in England were used as persuasive authorities.

In the well-known *Golak Nath* case,⁵ the Supreme Court of India not only took the view that fundamental rights in our Constitution constituted an enactment of natural law rights but also held that abrogation of such natural law rights was meant to be placed by our Constitution makers beyond the competence of powers of amendment lodged by the Constitution in either two-thirds majorities of Parliament or these supplemented by the additional assents of a majority of State legislatures required for amendments of certain basic constitutional provisions. It accepted John Locke's view that certain basic freedoms were reserved for themselves by "the people" so that governments could never legitimately deny them.

The above-mentioned view of a bench of eleven judges of

4. *Maneka Gandhi v. Union of India*, [1978] 65 A.I.R. 597.

5. *L.C. Golak Nath v. Punjab*, [1967] 2 S.C.R. 762.

the Indian Supreme Court, by a narrow majority of one, adopted in a case involving basic constitutional rights concerning property, was subjected to much criticism. It was overruled in 1973, in *Bharti's case*,⁶ by a larger bench of thirteen judges of our Supreme Court, again by a narrow majority of one. The Supreme Court held here that, although basic rights could be abridged by adopting the ordinary procedure for amending the Constitution, yet, the constitutional power of amendment was subject to and could operate only within what was described as the "basic structure" of the Constitution. To discover this basic structure, the Court examined the whole constitutional scheme and the basic purposes, indicated in the Preamble, which the Constitution was meant to serve. Principles, such as Supremacy of the Constitution, Secularism, Democracy, Rule of Law, and Separation of Powers, were declared as necessarily implied by the "basic structure." It considered these to be essential for preserving the identity or character of the Constitution. Chief Justice Sikri, in this case, referred to and practically read into, while purporting only to interpret, the Constitution, the whole of the International Declaration of Human Rights as a part of the structure of our Constitution by implication. Evidently, the Chief Justice considered their incorporation in the Constitution as essential for realizing or carrying out the objectives of our Constitution stated in its Preamble and elaborated in Part III dealing with basic human rights and in Part IV containing the basic obligations of the State called "Directive Principles of State Policy." He did this without anything like the ninth Amendment of the United States Constitution that recognizes basic rights not enumerated in the Constitution and has helped the United States Supreme Court in expanding the scope of right to personal liberty and in developing the ever-widening sphere of the right of privacy of the individual. Our Supreme Court has thus gone even further without such "artificial" aids if I may so describe them without disrespect.

Since the decision of the Supreme Court in *Bharti's case*, even judges who, like me, could not go so far as the majority on the "basic structure" doctrine as a limitation on the constitutional power of amendment, have accepted and applied the doctrine—as they were bound to do—whenever they have felt that the basic structure of the Constitution, where respect for

6. *Kesavananda v. State of Kerala*, [1973] Supp. S.C.R. 1.

and promotion and observance of basic human rights form pivotal principles, has been threatened.

My view, in *Bharti's* case, has been sometimes misrepresented as though it meant that the power of amendment in our Constitution is unlimited. I have, therefore, had to explain, in subsequent cases, by citations of passages from my judgment in *Bharti's* case, that I recognized four limitations on the power of constitutional amendment as it then stood. Firstly, the power of amending the Constitution was subject to the requirements of the constitutionally prescribed procedure for an amendment. Secondly, both the procedure as well as the nature of the power for a constitutional amendment show that, under the power to amend our Constitution, our Parliament could only legislate and not adjudicate. It could not, for instance, dress up and disguise and pass off what was really a process of illegal adjudication as an amendment. Thirdly, an amendment of the Constitution is a legislative process operating on the elevated constitutional lawmaking plane and not on the ordinary lawmaking level so that matters for which our Constitution has specifically prescribed other lawmaking procedures were not to be dealt with under it. Fourthly, an amendment did not include or imply an abrogation of the Constitution as a whole leaving nothing behind or a constitutional vacuum. It is true that I held that the power of amendment was not limited by the theory that certain matters were too basic or sacred to be touched by the power of constitutional amendment. But, I took this view principally because I think that it is a natural human right of citizens to change even the basics of their form of government when they think this to be necessarily in their interest.⁷ I thought that people's representatives in Parliament and not the Judiciary were given the power, under our Constitution, to decide whether this should be done. The Supreme Court, however, by a narrow majority of one took the view, in *Bharti's* case, that there was a basic structure of the Constitution within which even the power of amending it must move.

The question of limits on the Parliament's power of amendment of our Constitution arose in an acute form in *Mrs. Indira Gandhi's* election case in 1975.⁸ Our Parliament had virtually taken up before itself the election case of *Mrs. Indira*

7. *Id.* at 1975-76.

8. *Indira Nehru Gandhi v. Raj Narain*, [1975] 2 S.C.R. 2299.

Gandhi, and indulged in what was considered by it to be constitution making but which really consisted of wiping out the whole statutory machinery, retrospectively, under which an election petition against the Prime Minister had been allowed. It then declared the judgement of the Election Court to be null and void and directed the Supreme Court of India, where the Prime Minister's appeal was pending, to decide the case in accordance with the Parliament's declaration. The Supreme Court, however, declared this purported constitution making to be itself null and void because it constituted a violation of the principle of separation of powers which had been found by the Court, in Bharti's case, to be a part of the unalterable basic structure of the Constitution. I felt compelled, in Mrs. Gandhi's case, to bring out, in the course of a lengthy judgment, the importance of the principle of the Supremacy of the Constitution, which we had chosen, following the example of the U.S.A., as against the principle of Sovereignty of Parliament prevailing in England. This means that the courts in India ultimately decide whether any action by any organ of the State, including a purported constitutional amendment, is in accordance with the basic purposes of the Constitution, and, therefore, valid. India's experience of democracy, functioning under her Constitution, confirms what, according to a British jurist, is a conclusion emerging from a thousand years of British constitutional history that "no liberty is safe without a Court to protect it."⁹

CHINA

My knowledge about respect for human rights in China or about legal means of enforcing them there is very limited. I can, however, say that when I happened to question members of a delegation of Chinese jurists who visited India around 1960, about modes of redress open to a citizen who complained of some legal wrong done to him by an official or a department of the State, they seemed to find the very concept of a legal remedy in a court provided for such an eventuality to be quite strange and they could only say that such grievances could go before people's legislatures. Constitutional principles of Separation of Powers and Judicial Review of actions of the State's administrative or legislative organs appeared to them to be

9. See generally M. SIEGHART, *GOVERNMENT BY DECREE* (1950).

out of keeping with principles of government or of law in a Communist system. To my way of thinking the concepts underlying periodic purges or liquidation of people supposed to be hostile to an existing government, which take place in Communist China, and the so-called "punitive" expeditions, which it undertakes against neighboring countries and the unmerited slaughter and sufferings of many innocent civilians and destruction of their properties involved in such actions ordered by the State, are very odd. They seem to me to disclose nothing short of a barbaric disregard of the sanctity of human life and callousness towards human suffering. We are told that Communist China has overcome problems of feeding and clothing and housing its myriads. One wonders, when one reads the pronouncements of its leaders, whether they could overcome soon their own visions of overlordship and hegemonism of which they accuse others. It is good to think that windows have opened there now through which they could view new and better ways of thinking and living based on due respect for human rights. I wish that more Chinese students and scholars could come here to study, or, alternatively, go to India from where China once received Buddhism.

EMERGENT OUTLOOK

I have not yet mentioned Japan because her democratic Constitution which, like ours, is a written one and not only guarantees basic human rights but, like ours, sets up an independent Judiciary to protect them, seems to have worked successfully without the kind of crises we have had to face in India. Evidently, this is so because the Japanese, as compared with other nations, are far more homogenous and disciplined. The result is that they are, as a nation, among the affluent with nothing like the difficult problems India and China, with their vast sizes and their huge populations, have had to face. Nevertheless, one comes across accounts of discriminatory treatment suffered by groups of the Japanese such as those of Korean origin. These are the results of lingering prejudices which seem to operate against minority groups even in the most advanced countries of the world, particularly on non-governmental levels. To remove these, as also graver problems, the hope of humanity is still pinned to a better general education of all the peoples of the world so that we can realize the dream of our poet Rabindranath Tagore contained in "Geetanjali":

Where the mind is without fear and the head is held high:
Where knowledge is free:
Where the world has not been broken up into fragments by
narrow domestic walls:
Where words come out from the depth of truth:
Where tireless striving stretches its arms towards perfec-
tion:
Where the clear stream of reason has not lost its way into
the dreary desert sand of dead habit:
Where the mind is led forward by thee into ever widening
thought and action:
Into that heaven of freedom, my Father,
Let my country awake!

I would like to append an explanation to this vision of a free world and say that these are the thoughts and feelings of the citizen of a world struggling to be born who also says: "My country is the whole wide world. My chosen people is the whole human race. My freedom is the freedom of all mankind from exploitation solely for the benefit of some."

If the declaration, made and accepted on behalf of all citizens of the modern world, by their representatives in the United Nations' General Assembly, of universally recognized Human Rights, followed by a number of international agreements in the form of covenants, declarations, and accords are to have substance and reality, mankind, as a whole, must rise above irrational attachments to labels of creed, race, nationality, and region. The world of our dreams must have a basic legal structure in which the traditional international law doctrine of national sovereignty has been appropriately modified to serve the good of whole humanity.

An International Law that is passing into the stage where it represents a system of universally recognized and enforced fundamental rights of all human beings necessarily postulates such municipal or constitutional laws in every State that these rights can be initially enforced internally within each State itself. Resort to any international tribunal or authority should be necessary only in those very exceptional cases where a State's machinery for administration of justice may be unable, for extraordinary reasons, to afford relief. For instance, in the recent case of the former Prime Minister Bhutto of Pakistan, there seemed to be such strongly aroused partisan feelings in Pakistan, that it is difficult to imagine how a fair trial was possible there. The right to a fair trial by an impartial and

independent court is a necessary safeguard of rights to life and liberty of every person.

BATTLING FOR A BETTER WORLD

The West, which has had its fill of bigotry and wars of religion, has learnt to look upon divergencies of religious beliefs and practices as matters of individual tastes and upbringing which do not jeopardize national unity or civilized existence. But, in several Asian countries, large scale misuses of religion for antisocial and anti-human purposes, parading under the false garbs of cultural, religious, and national "revivals" are taking place. Most of these "revivals" are, if not death-dealing, at least culture-killing and spirit-corroding movements instigated by sectional interests hostile to human rights. In a world which can neither be divided into watertight compartments nor remain static anywhere, to allow pockets of divisive medievalism and barbarism, which threaten human rights, to swell in any part of the world could appear to be in cynical alliance with those reactionary forces which provoke and consolidate disturbing revolutionary elements. "Revivalist" and reactionary trends are, it seems to me, opposed to what may be described as the "natural law" of the world of modern science governed by secular ethics whose objective is "the greatest happiness of the greatest number."

The only course which citizens of the world, whose objectives are human welfare and happiness throughout the world, could honestly adopt is to speak freely against all actions and policies, in any part of the world, which damage the common objectives. I think there is no escape from the position very comprehensively and ably argued and established by Dr. Lauterpacht, in his work on "International Law and Human Rights," as long ago as 1950,¹⁰ confirmed and strengthened by international practice as well as by subsequent opinions of practically all reputed international jurists: that issues relating to human rights are no longer matters of purely domestic concern on which international public opinion must observe silence. When friendly and bona fide but bold and outspoken criticism of actions of all people and policies of their governments, as tested on the anvil of the principles found in the Universal Declaration of Human Rights and elaborated in the

10. H. LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 27-72 (1950).

covenants and other international agreements, has displaced the pursuit of mere "expediency," when force and violence have been abandoned by nation-states as instruments of disruptive and dislocating national policies, whether of external aggression against other states or of terrorization of individuals or groups within a state, when "balance of power," which remains the governing principle of international relations today, has given place to collective and cooperative use of all power to subserve the requirements of "Justice, social, economic, and political," embodied in a legally enforceable Rule of Law, when the developed, prosperous, and powerful nations join hands, irrespective of their political or socio-economic ideological differences, in undertakings which could help the still developing, poor, and weaker nations to march forward and raise their general levels of life and thought, when "human rights" do not appear to be merely convenient weapons in a game of "power-politics" used by rival nations only to denigrate and damage each other but have become the earnestly and relentlessly sought after expanding ends of the endeavours of all people and their governments throughout the world, as they were presumably meant to be, we could confidently assert that we have turned a new corner in the history of mankind. Such a turn in human history could appear to be historically inevitable to those who are really striving for it.

If even Rome was not built in a day, a legal-cum-moral structure spread all over the world and protecting and promoting human rights everywhere, could not be erected by the waving of a magic wand. It requires an incessant war waged in all parts of the world and at all times methodically, dedicatedly, nonviolently, in a missionary spirit, by means of weapons consisting largely of words and symbols dexterously used so as to persuade, convince, convert, and inspire those who must sustain the structure—the ordinary men and women all over the world.

DISPARITY IN THE DISTRIBUTION OF EFFORTS

One is struck by a glaring disparity between the West and the East in the distribution of both the constitutional machinery for the adequate protection and enforcement of human rights as well as of official and voluntary efforts to educate citizens about the meaning and importance of human rights.

In the U.S.A., there are not only alert departments of State keeping themselves well informed about the position in

America and elsewhere on the human rights front but also a standing Civil Rights Commission regularly making admirably impartial and elaborate reports on every conceivable aspect of human rights, with a view to suggesting ways and means of reducing or removing practice of all undue discrimination of every kind from American life. The subject of human rights engages the attention of Congressional Committees from time to time. Considerable research and thought is devoted by scholars working with various American institutes and voluntary organizations meant especially for the study of human rights throughout the world. In addition, the subject is prescribed for courses taken by students at American universities.

In Europe also there are several institutes and associations, such as, for example, the Human Rights' Institute of Strasbourg, the Nijhoff Institute at the Hague, carrying out studies and teaching programs on human rights, and voluntary organizations, such as the Amnesty and the International Commission of Jurists, which undertake investigations of alleged violations of human rights all over the world.

In striking contrast with what one finds in the West, in Asian countries there are not only no such international schemes for the protection of human rights as those embodied in the American and European conventions, but there is great paucity of both official and nonofficial voluntary organizations and efforts for collection of information on, or systematic study of, problems relating to human rights. In India, the Union Government has set up a Central Minorities' Commission, and, in Uttar Pradesh, the largest state of the Indian Union, the State Government has set up its own Minorities' Commission. But, the functions and scope of powers of the commissions in India are so ill-defined and uncertain that the effectiveness of their work, which consists mainly of investigating grievances of individuals belonging to "minority" groups, depends largely upon the force of personalities of the commissioners and the respect this manages to secure for their findings and suggestions. Similar commissions have been set up in India for "scheduled castes" and "backward" classes. I am not aware of any comparable official commissions set up in any other Asian country. And, even in India, we have no non-official or voluntary organizations, quite independently of the State, carrying on the type of study, research, or education, found in the U.S.A., concentrating especially on human rights viewed as legal means of development and protection of vital human values related to expanding social concepts of human needs in a technologically

and ethically advancing world. I am so full of admiration for this aspect of American life and thought that, if respect for the human rights and freedoms of its own citizens was the only test of the greatness of a nation, there could not, I think, be a greater nation on this earth. It is something from which Asian nations could learn a lot.

STANDARDS OF LIVING AND EDUCATION AS SAFEGUARDS

Higher standards of living and of public education safeguard people against loss of national sanity and sacrifice of freedoms and values they learn to defend. Thus, in the U.S.A., McCarthyism, a term which now stands for wholesale character assassination of individuals and nations for ulterior objects without due regard for truth, was given a short shrift. A movement like Hitlerism, which swept even a great European nation off its feet, so that it became a great menace to humanity in the world for a brief but dreadful period in its history, could have no prospect of success in the U.S.A. On the other hand, in Asian countries, the antiquity or excellence of some of the elements of their civilizations has not been able to protect them against the emergence of a Stalin in the U.S.S.R., a Shah or a Khomeini and a General Zia in Iran and Pakistan of our times. In other Asian countries, people have experimented with less brutal "authoritarian" regimes.

Fascistic or totalitarian movements, whether in the East or in the West, feed on the misery and bitterness of the masses, the difficulties and frustrations of the middle classes, and on the fears and phobias of vested interests. Their leaders invariably promise economic, social, and cultural freedoms to gain followers. They have, in the past, also undertaken to satisfy dreams of national or group grandeur and glory by means which necessarily involve internal strife and external aggression. As their real objectives, which they often try to conceal, are the domination of the mass of the people by a group or class and involve a sacrifice of general welfare for the aggrandisement of some, such movements and the regimes they produce can never be permanent. They almost invariably march from tyranny to greater tyranny down a road to self-destruction which results from policies which are bound to provoke and invite opposition throughout the world to exploitative groups and classes. The way in which power divorced from its true purpose, which is human good, "corrupts and absolute power corrupts absolutely,"—to use Lord Acton's famous maxim—is

eloquently portrayed in a recent book by Mr. Robert Payne entitled *The Corrupt Society*.¹¹

There seems no more imperative duty today before those who could be considered as good custodians of human virtues and civilization—which means of human rights—as all citizens of the modern world should be, than to do all they can to protect humanity, all over the world, against the possibilities of emergence of “drunken helmsmen” as Mr. Payne calls dictators inebriated with power. Human dignity and human rights suffer more damage and destruction from them than from other agencies. As indicated above, the possibilities of their emergence are far greater in developing Asian and African countries than in Western countries possessing effective means of “taming” use of governmental power, as Bertrand Russell considered Democracy, as a system of government, with all its “checks and balances” and guaranteed freedoms, to be.¹² Armed with all the might of modern science, “drunken helmsmen,” whether in the East or in the West, can plunge the whole world into such a mad orgy of destruction that nothing may be left of it beyond a mass of smouldering ruins in which no form of life could continue, let alone human life, except perhaps in the depths of the oceans still left unpolluted so that the process of biological evolution, from a form of life emerging from the seas, may have to start again to produce a possibly wiser or more prudent species than that of man today.

HOW PROSPECTS COULD BRIGHTEN

The prospects of survival for the human species and of more widespread and expanded human rights could only brighten if there is undisturbed peace and understanding between the West, led by the U.S.A., and the East, represented by the U.S.S.R., the major part of which is Asian. Although the U.S.S.R. could not be considered to be the “leader” of the East in the same way in which the U.S.A. could perhaps be called the “leader” of the West, yet, as we all know, no Eastern country or power could match the U.S.S.R. in the powers for destruction at its disposal. In a world in which reliance seems still to be placed primarily on a “balance of terror” for preserving peace, human rights will not be safe so long as this principle is not displaced by a firmer and deeper recognition of unity of

11. See R. PAYNE, *THE CORRUPT SOCIETY* (1975).

12. B. RUSSELL, *POWER: A NEW SOCIAL ANALYSIS* (1938).

purposes and a cooperative use of the power and resources of all the nations for promoting human rights all over the world starting, of course, as human concern and charity should, at home.

A BASIC FALLACY

A basic fallacy which seems to haunt many people even today is that there is some inevitable conflict between "capitalist" and "socialist" sections of humanity, represented respectively by the U.S.A. and the U.S.S.R., which must one day unavoidably erupt into open hostility and nuclear warfare. I believe that if we were to examine, in a cool and impartial fashion, the effects of operations of the socio-economic systems of both the countries, in the light of the broad agreements not only about their declared ends but also largely about the means by which they are to be attained, as embodied in the United Nations' Charter, the Universal Declaration of Human Rights, the conventions on Economic, Social and Cultural Rights and subsequent international agreements or accords right up to the Helsinki and Belgrade Conferences, the two systems will appear to be somewhat differing roads to the same destinations. It is difficult to imagine why collisions should be necessary between those travelling on different roads if their destinations are common. Indeed, impartial studies of the operations of somewhat differing socio-economic and cultural patterns, with common objectives, may reveal not only some highly interesting similarities but also areas where improvement in each system is possible by learning from the experiences of those governed by the other.

It would take me far afield if I were to consider here, in any detail, the respective claims made on behalf of each of the two systems or their merits and demerits or shortcomings. All that I would like to point out here is that the suspicions and fears engendered by prejudiced approaches erect quite unnecessary barriers on the path of progress of mankind towards a better and happier world in which all the human rights of all the people in the world could be duly respected and enforced. These fears and suspicions lead to the piling up of extremely expensive nuclear arms on each side, to a very wasteful diversion of enormous resources and wealth which could be much better utilized for constructive purposes and betterment of standards of living. There should not, at any rate after the solemnly reached basic agreements and accords mentioned

above, be deviations from the directions indicated there. These solemn declarations should serve as "standards" or as valuable means of correcting deviations from the directions indicated therein, and, thereby, to unite and not to divide nations in common quests even if the somewhat differing paths adopted by them, due to differing national histories and conditions, may necessitate differing responses to the same human needs and aspirations.

A CODE OF ETHICS

To translate our dreams into a living reality of universal human brotherhood, peace, progress, prosperity, and happiness, every individual and group and nation, whether in the East, the West, the North, or the South, should act as a guardian of human rights and of worthy human aspirations. Each generation in every country of the world has to capture afresh the spirit and understanding of what the status of a human being means and the obligations it carries with it. Its duties are not only towards the living but also towards the future generations yet unborn. It has been noticed by historians and sociologists that with a rise in standards of living and thinking and feeling there is, in every country, a corresponding rise in the desire to maintain these. The concern for and attempts to maintain these standards checks improvident population explosions which also seriously threaten stability of governments as well as due protection of human rights in Asian countries, most notably in India. There is no reason why what has happened in the West should not take place in the East if standards of living and thinking in the East rise in the same way as they have done in the West. Indeed, we see this happening before our eyes as matters of personal experience and knowledge of Westernized sections of Asians.

There is also a great and growing threat to the most elementary human right to live, which includes the right to a sound health, posed by the growing environmental pollution of the earth as well as of the seas. In this respect, it is difficult to say whether the position is more hazardous in the West or in the East. All these are, however, problems requiring a global strategy to cope with them and a new kind of global politics which could evolve and firmly establish what may be called a "world law" so that the dignity and rights of the human individual, wherever he may be living or found in the world, are duly respected and protected.

A "world law" affording adequate protection to the human rights of the living as well as the prospective rights of generations to come would have to contain a code of duties also of all individuals and groups, and, above all, of all governments of states. In so far as these duties embrace some relating to future prospects, they may have to be classed as a new group of "rights of the human race." Could they be invoked by living or existing persons as trustees on behalf of the "human race"? It will be difficult to make such parts of a code enforceable through judicial tribunals. They could, however, be protected by an enlightened public opinion operating on the strength of all available scientific knowledge and investigations by reliable nonjudicial bodies or organizations for research and discovery and dissemination of information. Suitable national legislation could also protect us from dangers of the future.

Dr. Lauterpacht, in his classic early exposition of a new international law, built around a proposed Bill of Rights, so drafted his code, meant principally to bind states, as to impose specific obligations on states so that it could not be urged that what was meant to be done was only to declare vaguely some moral rights of individuals which the states were not strictly bound to observe or enforce.¹³ But, Dr. Lauterpacht himself pointed out repeatedly that duties of States in the socio-economic sphere, which are the necessary concomitants of a modern "welfare state," were too vague and difficult to be capable of enforcement through courts. In view of these difficulties, framers of the Indian Constitution divided duties of the State into two categories: those which were enforceable through superior courts by individuals upon whom "fundamental rights" were conferred, and those which, though "fundamental" in the governance of the country, called "Directive Principles of State Policy," could not be so enforced. Possible conflicts between what were laid down as fundamental rights of individuals and the fundamental obligations of the State, conceived of as indicative of the rights and powers of the State acting on behalf of society as a whole, were sought to be resolved by the doctrine of reasonable restrictions embodied in the Indian Constitution. These restrictions are of a kind which courts in America have also had to evolve as a matter of necessity to protect the common interests of all from damage by individuals attempting to misuse their freedoms. The Indian

13. H. LAUTERPACHT, *supra* note 10, at 323.

Constitution now contains some duties of citizens also.

The reason underlying the ancient Indian concept of law, as a part of a "Dharma," enjoining duties of all, particularly of the King towards his subjects, resulting in a corresponding set of "rights" even against the Ruler, was thus explained by Dr. Priyanath Sen, in the introduction of his Tagore Law Lectures on "Hindu Jurisprudence":

The province of law is the establishment of rules for the regulation of human conduct amidst the diversity of inclinations and desires, so as to reconcile and harmonize the wishes of the individual with the interest of the community in which ultimately the interest of the individual is also involved; it curtails the fictitious freedom of unregulated desires by subordinating the particular nature of individual men to the discipline of the community acting upon universal rational principles, and thereby gradually tends to bring about the higher freedom which consists in the dependence of the individual on the dictates of reason, which, while governing the community, is also his. It may be that this conception of the aim of law is not consciously recognized at the outset, but there can hardly be any doubt that the various systems of law exhibit, on a careful analysis, so many efforts towards the realization of the end indicated above at different stages of development. In so far as the conditions of different societies and the stages through which they have passed are not exactly similar, these systems of law which they have severally evolved are more or less dissimilar to one another; yet the unity of human constitution and the universality of human reason concur in producing an essential similarity in all those systems which exhibits itself to a scientific observer amidst the diversity to details.

NEEDED: STUDY OF BASIC PHILOSOPHY OF HUMAN RIGHTS

Although there are courses on human rights in various American universities and European institutes, it seems to me that, in view of the vital importance of the subject for the future of mankind, exclusive concentration there on law relating to human rights and its defects does not produce balanced results. Perhaps the shortcomings of the law itself could be more easily removed if human rights were studied everywhere in their correct historical and sociological perspectives, with the help of all the allied disciplines—legal history, anthropology, comparative religion, scientific technology, ethics, litera-

ture, art, psychology, economics, and politics insofar as they have a bearing on human rights, so as to evolve a broad-based sound common underlying philosophy of human rights which, when accepted sufficiently widely, finally produces the required law comprising the structure or framework of a human society. What is conceived of philosophically or ideologically as a necessity does, in the end, fructify in the shape of the needed law.

Our basic attitudes towards human rights must depend ultimately on our concepts of ourselves as individuals and of our relations to other human beings. In this sphere, I believe that the East, with its richness in religious, philosophical, and poetic thoughts and feelings, produced by intense experiences and considerable investigations into the depths of human nature, has its contributions to make. There is, for example, the grandeur of Bhagavadgita¹⁴ with its picture of a noble struggle for right causes with right means as the worthiest of human aspirations. There is a wealth of Arabic and Persian literature and poetry on the theme touched by the Persian poet Sadi, widely read not only in Iran but also in India and Pakistan, when he said: "Bani nau insan azai yak digor und" (Parts of the human race are like organs of one body). It follows from such a premise that any injury inflicted on a part of the body damages the whole.

One would like to see an institute of human rights in every Asian country so that gems of experience and wisdom, gathered from the history, the literature, and the art of the Asian country concerned itself, added to all the knowledge and thought contributed by thinkers and scholars of other countries also on the subject of human rights, could be used to build a sound philosophical edifice of its own in every Asian country to house and sustain the internationally formulated and declared human rights.

A PHILOSOPHICAL APPROACH

My own philosophical approach on the subject—conditioned by my own educational background—certainly tends to be Western. But, I am not hopeless of the East. In fact, in the one world, integrated by many world-wide common trends and patterns of life, thought, and feeling, divisions between East

14. See MAHABHARATA BHAGAVADGITA (M. Chatterji trans. 1960).

and West appear to be artificial and unnecessary; and, a world organized on the foundations of a deep understanding and respect for a common internationally recognized and protected body of human rights offers our only alternative world over to chaos and destruction in every country. As an optimist, I believe that the brighter alternative will, after possible errors, be ultimately adopted everywhere because it falls on the line of evolution of human law as the framework of a socio-economic order which must correspond to human needs and realities of the day in every country.

Long ago, Aristotle, when he spoke of man as a "political animal" (by which, he meant that he was an institution building "social" animal) indicated this line of development which Alexander Pope in his *Essay on Man*, put in poetic language as follows:

God loves from Whole to Parts: but human soul
Must rise from Individual to the Whole.
Self-Love but serves the virtuous mind to wake,
As the small pebble stirs the peaceful lake;
The centre mov'd, a circle straight succeeds,
Another still, and still another spreads;
Friend, parent, neighbour, first it will embrace;
His country next; and next all human race;
Wide and more wide, th' o'erflowings of the mind
Take ev'ry creature in, of ev'ry kind;
Earth smiles around, with boundless bounty blest,
And Heav'n beholds its image in his breast.¹⁵

THE DECIPHERABLE DIRECTION

There is thus an easily decipherable direction of all human effort and thought from the beginnings of man's social institutions and law from a stage in which human groups lived like isolated "Cyclopean" hordes, described in Homer's poetry, with neither legislative bodies nor any semblance of a law beyond the wishes of despotic heads of families, to the stage in which elected bodies decide upon what scientifically applied secular principles and utilitarian reasoning induce them to believe their actions are in the best interests of all concerned. Henry Maine described this development which characterised progressive societies as "a movement from status to con-

15. Pope, *Essay on Man* in ALEXANDER POPE'S COLLECTED POEMS 214-15 (B. Dobrée ed. 1924).

tract"—from a stage in which the legal position and the rights of the individual were determined entirely by his "status" or by his birth in a societal setting and not by his own volition or efforts, to one in which "contract," which was the result of a free operation of each individual's will and properly directed efforts, becomes the source of one's rights and the basis of social cohesion.¹⁶ An absolutely unimpeded exercise of all individual volition has never been and can never be, in a human society, permitted because that would encourage the unscrupulous and jeopardize the rights of the weak. Births in differing social settings have perhaps always so far affected, in the course of human history, not only the performances but also, at least indirectly, the legal positions of individuals. It may, therefore, seem to be more correct to visualize the progress of law, from the point of view of the individual's rights, to be one in which the individual has moved from a lower to a better or higher status. Thus, an Indian philosopher pointed out that each ascent by man on the ladder of civilization of greater social cohesion and progress, has been marked by a widening of what he called the "symbiotic circle." Hence, he predicted that "caste," with all that it implied in India, must necessarily disappear gradually. And, similar must be the direction of change in every country with similar or comparable divisions towards a casteless, classless society.

Whether one accepts what is, in juristic jargon, a "natural law" theory of human rights,¹⁷ or takes the more critical utilitarian view of rights, which become, according to utilitarian ethics, the means of maximizing human welfare and happiness, or prefers the more fastidious "incipient phenomenology"¹⁸ of Immanuel Kant, with its emphasis on the respect for individual human personality as the true goal of social evolution. We cannot mistake the direction of the progress of human laws and institutions.

CONCLUSION

We have progressed to a stage at which every individual human being, by virtue of having been born as a human being

16. See generally H. MAINE, *ANCIENT LAW* (1861).

17. See generally R. DWORKIN, *TAKING RIGHTS SERIOUSLY* 184-20 (1977); E. CORWIN, *THE "HIGHER LAW" BACKGROUND OF AMERICAN CONSTITUTIONAL LAW* (1955).

18. Lackland, *Toward Creating a Philosophy of Fundamental Human Rights*, 6 COLUM. HUMAN RIGHTS L. REV. 473, 474, 498-503 (1974-75).

anywhere in the world, acquires a "status" or a "persona" not only in municipal law but also under the modern international law so that his welfare becomes legally a matter of concern to the world communities of nations and of citizens. Nations of the world are represented by their governments. But, as governments are often the worst offenders against human rights, citizens of the world must also build independent voluntary institutions and organs of world opinion so that violations of human rights, in any part of the world, do not escape condemnation by world opinion, and so that the basic structure of a firmer world law, enforceable all over the world, protecting human rights everywhere, may arise to satisfy the imperative needs of mankind today.

The internationally recognized and declared human rights are not the "bourgeois" claptrap and pretense—sheep's skin of wolfish nations used to disguise imperialistic or exploitative designs—they are, not infrequently, misrepresented to be amongst the developing nations of the world. They contain the distilled results of the whole experience of mankind, and of its struggles for justice, freedom, equality, and fraternity. They constitute the norms of human conduct and relations common to all civilized nations, whether governed by what is known as a "capitalist" or as a "socialist" system—the common ends or directions of their endeavors. They could, therefore, not be properly used to divide or sow dissention among nations. They could be legitimately used only to unite them. When the philosophy or reasons underlying them are correctly taught and understood widely and deeply enough, the corresponding much-needed worldwide legal structure will, no doubt, emerge to adequately support and promote and protect them.

I find that sometimes a conflict is sought to be made out between the two sets of rights embodied in the two international covenants: one on the economic, social, and cultural rights of which the U.S.S.R. is portrayed as the greatest champion, and the other on the civil and political rights of which the U.S.A. is depicted as the staunchest protagonist. If such a conflict were really there, it should be obvious that the poorer and weaker developing nations, with their urgent primary needs of freedom from economic, social, and cultural degradations, would prefer the first set and gravitate, quite naturally, towards their greater assumed supporters. But, I do not think that such a supposed conflict between the two sets of rights exists. Indeed, without a basic economic security, social inte-

gration, and intellectual freedom, the capacity to use political and civil rights wisely may be lacking in the people of a country. Would-be dictators use promises of economic and social equality and freedom and of cultural development and glory as baits to attract followers; and, after they have established their holds, they generally end up with denials of both sets of rights. It should, therefore, be evident that the two sets of rights are essentially complementary. They should be viewed as essential parts of an integrated whole—each as necessary for the fulfillment of the objects of the other, each as a base for building the other upon, each as a protection and safeguard of the other set. So viewed and understood there is no room for any conflict, in normal times, between the two sets of rights. It is the function of a satisfactory philosophy of human rights to resolve such supposed conflicts.

Continuing impartial study and research, wider and wider spread knowledge and public education on questions relating to human rights, from a philosophically correct angle, seem to be conditions precedent for a further ascent of mankind on the ladder of a progress which must appear to be historically inevitable to all those who believe that human destiny is not self-destruction but survival, self-realization, and self-improvement which must compel them to build solid and firm protections against suicide or other tragic possibilities. The role of nonaligned Asian nations should be to act as bridges of understanding between the East and West. They can do so best as honourable partners in building bulwarks of freedom and not as victims of internal anarchy or strife or of external aggression. Promotion of respect for and observance of human rights in Asia, as in the rest of the world, is thus inextricably bound up with maintenance of world peace; and this, in its turn, depends on both social and economic justice and political and intellectual freedom the gates of which can only be opened by better and more widespread education of all the peoples of the world on lines designed to secure what whole mankind, I believe, wants, or, at least, needs badly: a true understanding of the structure of peace, justice, freedom, and human happiness. Our future is, I think, ultimately in the hands of our educationists.